IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

Regular Second Appeal No. 151 of 1997.

Date of Decision: 10th October, 2007.

Bhajnu Ram and others **…..Appellants.**

Versus

Indian Overseas Bank & ors **…..Respondents.**

Coram

The Hon'ble Mr. Justice Dev Darshan Sud,Judge.

Whether approved for reporting?[1]

For the Petitioner: Mr. Subhash Sharma, Advocate.

For the Respondents: Mr. O.P. Sharma, Sr. Advocate, with Mr. Arvind Sharma, counsel for respondent No. 1.

Dev Darshan Sud, Judge.

This is the defendants' appeal against the judgment and decree passed against the appellants-defendants.

Brief facts of the case are that a suit for recovery of Rs. 13842/- along with cost and interest was brought against the appellants-defendants by the respondents-plaintiffs. The allegations made in the plaint were that M/s Raj Village Welfare Association, Chattar (Naulakha) was the business name of the appellants-defendants. They applied for a

[1] Whether Reporters of Local Papers may be allowed to see the judgment?

loan for the erection of a chimney for Brick klin etc, for which purpose a number of loan documents were executed by the appellants-defendants.

The suit was resisted by the appellants-defendants on a number of grounds and it was pleaded that documents executed by them were not binding on them. The learned trial court, tried the crucial issue of a fact as to whether the loan had been obtained by the appellants-defendants and decreed the suit holding that the loan had, in fact been taken by them and proceeded to decree the suit. The matter was carried in an appeal before the learned District Judge, who, as a finding of fact, held that since no decree had been passed against defendant No. 1 which is the business name of the activity carried on by the other defendants and is not a legal entity apart from the defendants, the liability would be that of the other defendants who executed the documents.

The appeal was admitted on substantial questions of law Nos. 2 and 3 namely:-

> "***2.Whether the alleged members of the Welfare Association can be held liable for the repayment of any loan after the learned lower appellate court sets aside the judgment and decree against the Welfare Association?***
>
> ***3. Whether a decree can be passed against any of the defendants-appellants other than the defendant No. 1/proforma respondent No. 4 when the said society is involved in charitable work and could not enter into any business and subsequently enter into agreement for taking loan etc.?***

I have heard learned counsel for the parties and have gone through the record. These questions have to be answered against the

appellants for the reasons that the learned courts below have found as a fact that the documents were executed by the defendants and that Raj Village Welfare Association was a convenient business activity of the appellants-defendants. It was not a legal entity and that the liability having been correctly fastened on the appellants-defendants. There is nothing on the record to show that the Association itself has an independent existence and is distinct and apart from its members. There is nothing on the record to show that the defendants never executed documents or money was not borrowed and utilized by them. Both these questions are answered against the appellants. This appeal is accordingly dismissed. There shall be no order as to costs.

10th October, 2007. **(Dev Darshan Sud),**
(cm) **Judge.**